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MAILED
DEC 14 2010
OFFICE OF PETITIONS

In re Application of	:	
C. Keith	:	
Application No. 09/801,848	:	
Filed: March 8, 2001	:	ON APPLICATION FOR
Attorney Docket No. 125462	:	PATENT TERM ADJUSTMENT
Title: PLATFORM FOR MARKET	:	
PROGRAMS AND TRADING PROGRAMS	:	

This is a decision on the "APPLICATION FOR PATENT TERM UNDER 37 CFR §1.705," filed November 10, 2010. This request is properly treated under 37 CFR 1.705(b). Applicant disputes the seven hundred forty-two (742) day adjustment.

The application for patent term adjustment is **DISMISSED**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

On August 10, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date is 348 days. In response, applicants timely filed the instant request for reconsideration of the patent term adjustment.

Applicant contends that the restriction requirement mailed on May 19, 2004 did not meet the requirements of 37 CFR 1.702(a)(1) because the restriction requirement was vacated. As such the first action was mailed on January 3, 2007. Thus an adjustment of 1701 days is required.

Applicant's argument is not persuasive. A review of the record shows that the 742 day adjustment was required for failure by

the Office to mail at least one of the notifications under 35 U.S.C. 132 not later than fourteen months after the date the application was filed under 35 USC 1.111(a), pursuant to 37 CFR §1.702(a)(1).

The mailing of the restriction requirement on May 19, 2004, met the requirements of 37 CFR §1.702(a)(1). The subsequent mailing of a communication by the acting SPE vacating the previous action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(1) on May 19, 2004. The examiner does not have the authority to vacate, rescind, or withdraw an Office action. Unless vacated by the Technology Center Director, for purposes of calculating patent term adjustment, the action originally mailed by the examiner on May 19, 2004 will be used to calculate the amount of Office delay.


Applicant's delay prior to the mailing of the Notice of Allowance is 394 days. Office delay prior to the mailing of the Notice of Allowance is 742 days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 348 days.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.


Anthony Knight
Director
Office of Petitions